

TENNESSEE ADULT PROTECTION ACT

TCA CHAPTER 6 -- PROGRAMS AND SERVICES FOR ABUSED PERSONS

Part 1 - Adult Protection

1978 As Amended in 1980, 1986, 1989, 1995, 1996, 1999, 2000, 2001, 2003, and 2004 (1974, Tennessee Protective Services for Elderly Persons Act, was Repealed in 1978)

SECTION.

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71-6-101. Short title --- Legislative intent. --- (a) This part may be cited as the "Tennessee Adult Protection Act."

(b)(1) The purpose of this part is to protect adults coming within the provisions of the part from abuse, neglect or exploitation by requiring reporting of suspected cases by any person having cause to believe that such cases exist. It is intended that, as a result of such reports, the protective services of the state shall prevent further abuse, neglect or exploitation within the limitations set out in this part.

(2) It is recognized that adequate protection of adults will require the cooperation of many agencies and service providers in conjunction with the department of human services due to the often complex nature of the risks to this adult group, and that services to meet the needs of this group will not always be available in each community. However, it is desirable that the following services, as well as other services needed to meet the intent of this part, be available: medical care, mental health and mental retardation services, including in-home assessments and evaluations; in-home services including homemaker, home-health, chore, meals; emergency services including shelter; financial assistance; legal services; transportation; counseling; foster care; day-care; respite care; and other services as needed to carry out the intent of this part. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2601; Acts 1986, ch. 630, § 1; T.C.A., § 14-25-101.]

71-6-102. Definitions. --- As used in this part, unless the context otherwise requires:

(1) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services which are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the provisions of the Tennessee Right to Natural Death Law, compiled in title 32, chapter 11, and if the provisions of such medical care would conflict with the terms of such living will;

(2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services;

(3) "Advanced age" means sixty (60) years of age or older;

(4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

(5) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement;

(6) "Commissioner" means the commissioner of human services;

(7) "Department" means the department of human services;

(8) "Exploitation" means the improper use by a caretaker of funds which have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonably strong probability of resultant irreparable physical or mental harm and/or the cessation of life if such conditions are not removed or alleviated. However, the department is not required to assume responsibility for a person in imminent danger pursuant to this chapter except when, in the department's determination, sufficient resources exist for the implementation of this part.

(10) "Investigation" includes, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(11) "Protective services" means services undertaken by the department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home; and

(12) "Sexual abuse" occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an "adult," as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2602; 1980, ch. 513, § 2; 1986, ch. 630, §§ 2, 3; T.C.A., § 14-25-102; Acts 1995, ch. 486, §§ 1, 2, 9, 17; 1996, ch. 1029, § 1.]

71-6-103. Rules and regulations --- Reports of abuse or neglect --- Investigation --- Providing protective services --- Consent of adult --- Duties of other agencies. --- (a) The commissioner has the discretion to adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this part insofar as such action is reasonably calculated to serve the public interest.

(b)(1) Any person, including, but not limited to, a physician, nurse, social worker, department personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this part. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death. However, unless the report indicates that there are other adults in the same or similar situation and that an investigation and provision of protective services are necessary to prevent their possible abuse, neglect or exploitation, it shall not be necessary for the department to make an investigation of the circumstances surrounding the death; provided, that the appropriate law-enforcement agency is notified.

(2) If a hospital, clinic, school, or any other organization or agency responsible for the care of adults has a specific procedure, approved by the director of the county office of the department, for the protection of adults who are victims of abuse, neglect, or exploitation, any member of its staff whose duty to report under the provisions of this part arises from the performance of the staff member's services as a member of the staff of the organization may, at the staff member's option, fulfill that duty by reporting instead to the person in charge of the organization or the organization head's designee who shall make the report in accordance with the provisions of this chapter.

(c) An oral or written report shall be made immediately to the department upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide the following information, if known: the name and address of the adult, or of any other person responsible for the adult's care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation. Each report of known or suspected abuse of an adult involving a sexual offense which is a violation of §§ 39-13-501 --- 39-13-506 which occurs in a facility licensed by the department of mental health and developmental disabilities as defined in § 33-2-402, or any hospital shall also be made to the local law enforcement agency in the jurisdiction where such offense occurred.

(d) Upon receipt of the report, the department shall take the following action as soon as practical:

(1) Notify the appropriate law enforcement agency in all cases in which the report involves abuse, neglect, or exploitation of the adult by another person or persons;

(2) Notify the appropriate licensing authority if the report concerns an adult who is a resident of, or at the time of any alleged harm is receiving services from, a facility that is required by law to be licensed or the person alleged to have caused or permitted the harm is licensed under title 63. The commissioner of health, upon becoming aware through personal knowledge, receipt of a report or otherwise, of confirmed exploitation, abuse, or neglect of a nursing home resident, shall report such instances to the Tennessee bureau of investigation for a determination by the bureau as to whether the circumstances reported constitute abuse of the Medicaid program or other criminal violation;

(3) Initiate an investigation of the complaint;

(4) Make a written report of the initial findings together with a recommendation for further action, if indicated; and

(5) After completing the evaluation, the department shall notify the person making the report of its determination.

(e) Any representative of the department may enter any health facility or health service licensed by the state at any reasonable time to carry out its responsibilities under this part.

(f) Any representative of the department may, with consent of the adult or caretaker, enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this part. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the department to proceed with the investigation.

(g) If a determination has been made that protective services are necessary when indicated by the investigation, the department shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(h) In the event the adult elects to accept the protective services to be provided by the department, the caretaker shall not interfere with the department when rendering such services.

(i) If the adult does not consent to the receipt of protective services, or if the adult withdraws consent, the services shall be terminated, unless the department determines that the adult lacks capacity to consent, in which case it may seek court authorization to provide protective services.

(j)(1) Any representative of the department actively involved in the conduct of an abuse, neglect, or exploitation investigation under this part shall be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.

(2) To complete the investigation required by this part, any authorized representative of the department actively involved in the conduct of an investigation pursuant to this part shall be allowed access to any law enforcement records or personnel records, not otherwise specifically protected by statute, of any person who is:

(A) A caretaker of the adult, or

(B) The alleged perpetrator of abuse, neglect or exploitation of the adult, who is the subject of the investigation.

(3)(A) If refused any information pursuant to subdivisions (j)(1) and (2), any information from any records necessary for conducting investigations pursuant to this part may be obtained upon motion by the department to the circuit, chancery or general sessions court of the county where such records are located, or in the court in which any proceeding concerning the adult may have been initiated or in the court in the county in which the investigation is being conducted.

(B) The order on the department's motion may be entered ex parte upon a showing by the department of an immediate need for such information.

(C) The court may enter such orders as may be necessary to ensure that the information sought is maintained pending any hearing on the motion, and to protect the information obtained from further disclosure if the information is made available to the department pursuant to the court's order.

(4)(A) The department may be allowed access to financial records that are contained in any financial institution, as defined by § 45-10-102(3) regarding:

(i) The person who is the subject of the investigation;

(ii) Any caretaker of such person; and

(iii) Any alleged perpetrator of the abuse, neglect or exploitation of such person;

(B) By the issuance of an administrative subpoena in the name of the commissioner or an authorized representative of the commissioner which is:

(i) Directed to the financial institution, and

(ii) Which complies with the provisions of §§ 45-10-106 and 45-10-107; or

(C) By application, as otherwise required pursuant to § 45-10-117, to the circuit or chancery court in the county in which the financial institution is located, or in the court in which any proceeding concerning the adult may have been initiated or in which the investigation is being conducted, for the issuance of a judicial subpoena that complies with the requirement of § 45-10-107; provided that the department shall not be required to post a bond pursuant to § 45-10-107(4).

(D) Nothing in this subdivision shall be construed to supersede the provision of financial records pursuant to the permissible acts allowed pursuant to § 45-10-103.

(5) Any records received by the department, the confidentiality of which is protected by any other statute or regulation, shall be maintained as confidential pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to its authority pursuant to this part or title 33 or 34.

(k)(1) If, as a result of its investigation, the department determines that an adult who is a resident or patient of a facility owned or operated by an administrative department of the state is in need of protective services, and the facility is unable or unwilling to take action to protect the resident or patient, the department shall make a report of its investigation, along with any recommendations for needed services to the commissioner of the department having responsibility for the facility. It shall then be the responsibility of the commissioner for that department and not the department of human services to take such steps as may be necessary to protect the adult from abuse, neglect, or exploitation and, in such cases, the affected administrative department of the state shall have standing to petition the court.

(2) Notwithstanding any other provisions of subdivision (k)(1) or this part to the contrary, the department of human services shall not be required to investigate, and the department of mental health and developmental disabilities shall not be required to report to the department of human services, any allegations of abuse, neglect or exploitation involving an individual that arise from conduct occurring in any institutions operated directly by the department of mental health and developmental disabilities. Allegations of abuse, neglect or exploitation of individuals occurring in such institutions shall be investigated by investigators of the department of mental health and developmental disabilities who have been assigned to investigate such allegations.

(l) In the event the department, in the course of its investigation, is unable to determine to its satisfaction that sufficient information is available to determine whether an adult is in imminent danger or lacks the capacity to consent to protective services, an order may be issued, upon a showing of probable cause that an adult lacks capacity to consent to protective services and is being abused, neglected, or exploited, to require the adult to be examined by a physician, a psychologist in consultation with a physician or a psychiatrist in order that such determination can be made. An order for examination may be issued ex parte upon affidavit or sworn testimony if the court finds that there is cause to believe that the adult may be in imminent danger and that delay for a hearing would be likely to substantially increase the adult's likelihood of irreparable physical or mental harm, or both, and/or the cessation of life. [Acts 1978, ch. 899, § 1; T.C.A., §14-2603; Acts 1980, ch. 513, §§ 3-5, 8; 1986, ch. 630, §§ 5-8; T.C.A., § 14-25-103; Acts 1993, ch. 439, § 3; 1995, ch. 486, §§ 2, 14; 1999, ch. 247, § 2, 2000, ch. 947 §§ 6, 8M; 2001, ch. 204, §§ 1, 2.]

71-6-104. Remedies --- Injunctive relief. --- (a) Any court with jurisdiction under this part may upon proper application by the department issue a temporary restraining order or other injunctive relief to prohibit any violation of this part, regardless of the existence of any other remedy at law.

(b) The court may enjoin from providing care for any person, on a temporary or permanent basis, any employee or volunteer, who the court finds has engaged in the abuse, neglect or exploitation of an adult as defined in the part, in any situation involving the care of such adult by such employee or volunteer, whether such actions occurred in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility or arrangement serving adults is licensed to provide care for adults. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2604; Acts 1986, ch. 630, §18; T.C.A., § 14-25-104; Acts 1995, ch. 486, § 8.]

71-6-105. Reporting or investigating parties --- Immunity from liability ---

Protection from job discrimination. --- Any person making any report or investigation pursuant to this part, including representatives of the department in the reasonable performance of their duties and within the scope of their authority, shall be presumed to be acting in good faith and shall thereby be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or investigation. Any person making a report under the provisions of this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2605; Acts 1980, ch. 513, § 6; T.C.A., § 14-25-105.]

71-6-106. Privilege for confidential communications. ---

Notwithstanding the existence of the privilege for confidential communications between husband and wife, the chancellor at the hearing may compel testimony if, in the chancellor's opinion, disclosure is necessary in the interest of the adult. [Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2606, 14-25-106.]

71-6-107. Provision of protective services without the consent of the

adult. --- (a)(1)(A) If the department determines that an adult who is in need of protective services is in imminent danger if that adult does not receive protective services and lacks capacity to consent to protective services, then the department may file a complaint with the court for an order authorizing the provision of protective services necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life. The judge or chancellor shall hear the complaint ahead of any other business then pending in court or in chambers. This order may include the designation of an individual or organization to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf. The complaint must allege specific facts sufficient to show that the adult is in imminent danger if the adult does not receive protective services and lacks capacity to consent to protective services. Prior to filing a complaint with the court for an order authorizing removal of an adult from that adult's chosen place of residence, the department shall make reasonable efforts to exhaust all practical alternatives to the removal of such adult from such place of residence.

(B) In situations where the department must present a petition for emergency removal of an adult in imminent danger and a chancellor or circuit judge is unavailable, the department may present petitions to judicial officers with general sessions jurisdiction. Further proceedings shall be conducted in chancery or circuit court.

(C) For the purpose of this section, "sexual abuse," as defined in this chapter, shall provide grounds for the department to obtain custody of an adult who lacks capacity to consent when such abuse relates to sexual activity or contact.

(2) The judge or chancellor or the general sessions court judge, prior to entering the order, must find that the adult is in imminent danger if the adult does not receive protective services and lacks capacity to consent to protective services.

(3) Within seven (7) days of entering an order pursuant to this section, or for good cause shown, then up to fifteen (15) days, the court shall hold a hearing on the merits. If such a hearing is not held within such time, the order authorizing the provision of protective services shall be dissolved.

(4) The adult must receive at least forty-eight (48) hours notice of the hearing, unless for good cause shown, a shorter time is allowed by the court. The adult has a right to be present and represented by counsel at the hearing. If the adult is indigent or, in the determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel. If the adult is indigent, court costs and the cost of representation shall be borne by the state; otherwise such costs shall be borne by the adult.

(5)(A) Protective services necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life authorized by order pursuant to this section may include, but are not limited to, taking the adult into physical custody in the home, a medical or nursing care facility, or, if available, an alternative living arrangement exclusive of a developmental center operated by the department of mental health and developmental disabilities; provided, that the court finds that such custody is for the purpose of medical examination and treatment necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life or protection from abuse or neglect necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life, and that the court specifically authorizes such custody in its order. In determining what specific custodial authority to grant under this section, the court shall consider whether the imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life is relatively mild or severe and authorize such custody as is appropriate under the circumstances. The department shall review the decree at least annually to determine whether the prerequisites for custody still exist.

(B) Within a reasonable period of time after an adult is taken into physical custody and placed other than in a medical or nursing care facility, the department shall cause an appropriate examination to be made of the adult to determine the cause or causes resulting in the adult's lack of capacity to consent, if such determination had not been made at the time of the final hearing.

(6) In the event that the adult has sufficient resources to defray the costs of a medical or nursing care facility, or an appropriate alternative living arrangement, as decreed by the court pursuant to this subsection, and that without such resources the adult would be unable to enter such facility or alternative living arrangement, then the court may appoint a temporary guardian for such period as necessary to secure and disburse the adult's resources for that purpose, but for no longer than six (6) months from the entry of the order authorizing provision of protective services. However, the court in its discretion may extend such period for a period no longer than an additional six (6) months. The guardian appointed pursuant hereto shall file an accounting with the court as to the resources used.

(7) If the department refuses to exercise the powers granted to it by subdivision (a)(1), any private non-profit agency representing disabled adults may proceed under subdivision (1), after giving notice to the department of intent to do so. If an order authorizing the provision of protective services results, the department's responsibilities are the same as they would have been if the department had sought the order. If the court finds that an order authorizing the provision of protected services is not warranted, any agency proceeding under this subdivision will be responsible for the cost of the court-appointed attorney representing the individual for whom protective services were sought as well as court costs.

(b)(1) If the department determines that an adult is in need of protective services and lacks capacity to consent to protective services, then the department may petition the judge or chancellor for a hearing. The complaint must allege specific facts sufficient to show that the adult is in need of protective services and lacks capacity to consent to protective services.

(2) The adult must receive at least ten (10) days notice of the hearing. The adult has a right to be present and represented by counsel at the hearing. If the adult is indigent or, in the determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel. If the adult is indigent, court costs and the cost of representation shall be borne by the state; otherwise such costs shall be borne by the adult.

(3) If the judge or chancellor finds that the adult is in need of protective services and lacks capacity to consent to protective services, then the judge or chancellor may enter a decree authorizing the provision of protective services. This decree may include the designation of an individual or organization to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf.

(c) An individual or organization appointed pursuant to subsection (a) or (b) to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf or to serve as temporary guardian shall have only specific authority as the court shall provide in its order. Such authority shall be limited to the authority to consent to specified protective services, including medical care if ordered, and if ordered pursuant to subsection (a), may arrange for, and consent to, appropriate custodial care and gain access to and disburse the adult's resources. If the adult is in need of a person to manage the adult's affairs or to have other responsibilities not addressed herein, the procedures and requirements for appointment of a conservator pursuant to title 34, chapter 11 or 13, must be followed. Nothing in this section shall be construed as requiring the department to initiate proceedings for the appointment of a conservator or a temporary guardian or to accept such appointment if proceedings are instituted or to initiate proceedings under title 34, chapter 11 or 13. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2607; Acts 1980, ch. 513, § 7; 1986, ch. 630, §§ 9-14; 1986, ch. 892, § 1; T.C.A., § 14-25-107; 1995, ch. 486, §§ 2-5, 7, 10-13, 15, 19; 1999, ch.247, § 3; 2000, ch. 947, § 6.]

71-6-108. Prohibitions. --- No adult may be adjudicated incompetent or committed to a mental institution under this chapter. [Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2608, 14-25-108.]

71-6-109. Payment for protective services. --- If the department determines that the adult is financially capable of paying for the protective services received, according to standards to be set by the department, the adult shall reimburse the state for the cost of providing the protective services. If the department determines that the adult is not financially capable of paying for the protective services received, the state shall bear the cost of providing the protective services. Otherwise, the department may recover such cost from the adult in any court of competent jurisdiction. [Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2609, 14-25-109.]

71-6-110. Violation of duty to report. --- Any person who knowingly fails to make a report required by this chapter commits a Class A misdemeanor. [Acts 1978, ch. 899, § 1; T.C.A., § 14-2610; Acts 1986, ch. 630, § 15; T.C.A., § 14-25-110; Acts 1989, ch. 591, § 111.]

71-6-111. Authority and responsibility of department. --- It is the legislative intent that the protective services set out hereinabove be provided and that the department have present authority to provide or to arrange for the provision of the same. However, the provision of the services is subject to budgetary limitations and the availability of funds appropriated for the general provision of protective services to all persons entitled thereto. [Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2611, 14-25-111.]

71-6-112. Funding. --- The cost of the administration of this part and the provision of the services hereby authorized shall be limited to the amount of funds specifically appropriated for such purposes by the general assembly. [Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2612, 14-25-112.]

71-6-113. Cooperation by other departments---Specialized care. --- (a) It is the legislative intent that the department of mental health and developmental disabilities and the department of health shall assist the department of human services in any way possible to provide the services required under this part.

(b) When the department of human services is unable to find a resource for any person in need of protective services who, because of mental illness or developmental disabilities, is in need of specialized care or treatment, the department of mental health and developmental disabilities shall give priority to such person for appropriate placement. [Acts 1978, ch. 899, § 2; T.C.A., § 14-2613; Acts 1986, ch. 630, § 16; T.C.A., § 14-25-113; Acts 2000, ch. 947, § 6.]

71-6-114. Jurisdiction and venue. --- (a) The circuit , general sessions, and chancery courts have jurisdiction of proceedings arising under this part. Probate courts in counties having a population of not less than seven hundred seventy-five thousand (775,000) according to the 1980 federal census or any subsequent federal census shall have concurrent jurisdiction with the circuit and chancery courts.

(b) A proceeding under this part may be commenced in the county where the adult resides or is physically present. [Acts 1986, ch. 630, § 4; T.C.A., § 14-25-114; 1995, ch. 486, § 16.]

71-6-115. Cooperation by law enforcement officials. --- It is the legislative intent that law enforcement officials shall cooperate with the department of human services in providing protective services under this part. Further, when the department is unable to return an adult to physical custody who voluntarily leaves such custody, law enforcement officials shall assist in returning the adult to such physical custody and shall give priority in providing such assistance. [Acts 1986, ch. 630, § 17; T.C.A., § 14-25-115.]

71-6-116. Motion for review of court decree. --- Either party to a proceeding under this part, or any interested person on behalf of the adult subject to such a proceeding, may file a motion for review of the decree of the court at any time. [Acts 1986, ch. 630, § 17; T.C.A., § 14-25-116.]

71-6-117. Willful abuse, neglect or exploitation prohibited---Penalty. --- It is unlawful for any person to willfully abuse, neglect or exploit any adult within the meaning of the provisions of this part. Any person who willfully abuses, neglects or exploits a person in violation of the provisions of this part commits a Class A misdemeanor. [Acts 1986, ch. 630, § 17; T.C.A., § 14-25-117; Acts 1989, ch. 591, § 111.]

71-6-118. Confidentiality of information, reports and proceedings --- Penalties. --- (a) The identity of a person who reports abuse, neglect, or exploitation as required under this part is confidential and may not be revealed unless a court with jurisdiction under this part so orders for good cause shown.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to

this part, or any information concerning a report or investigation of a report of abuse, neglect, or exploitation under this part, directly or indirectly derived from the records, papers, files or communications of the department of human services or division thereof acquired in the course of the performance of official duties. When necessary to protect adults in a health care facility, such information, reports, and investigations may be disclosed to the department of health; however, such information, reports, and investigations shall retain the protections of this subsection when disclosed to the department of health and may not be disclosed to, or used by, any other person.

(c) A violation of any provision of this section is a Class B misdemeanor. [Acts 1986, ch. 630, § 17; T.C.A., § 14-25-118; Acts 1989, ch. 591, § 112.]

71-6-119. Willful physical abuse or gross negligence --- Penalties. --- Willful physical abuse or gross neglect of an impaired adult with resulting serious mental or physical harm shall be punishable as an aggravated assault. [Acts 1995, ch. 486, § 6.]

71-6-120. Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse or exploitation, or theft.--- (a) As used in this section, unless the context otherwise requires:

(1) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect the person from neglect, or hazardous or abusive situations without assistance;

(2) "Disabled adult" means a person who is eighteen (18) years of age or older and who meets one (1) of the following:

(A) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(B) Lacks the capacity to consent;

(C) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or

(D) Has been found to be incompetent by a court of proper jurisdiction; and

(3) "Elderly person" or "elder" means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.

(b) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

(c) Jurisdiction for such action shall be in the circuit or chancery court where the elderly person or disabled adult may reside or where the actions occurred.

(d) Damages shall include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses. In addition, if it is proven upon clear and convincing evidence that abuse or neglect, sexual abuse or exploitation or theft resulted from intentional, fraudulent or malicious conduct by the defendant, a claimant shall be entitled to recover reasonable

attorneys' fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise.

(e) In addition to the damages described in (d), a defendant may also be found liable for punitive damages in accordance with applicable common law standards.

(f) Nothing in this section shall be construed as requiring the department of human services to initiate any proceedings pursuant to this section or to act on behalf of any elderly person or disabled adult subject to this section.

(g) This section shall not apply to a cause of action within the scope of Title 29, Chapter 26, and such cause of action shall be governed solely by Title 29, Chapter 26. [Acts 1999, ch. 247, § 1; 2000, ch. 768, §§ 1-3.]

(h) A financial institution, officer, director, or employee thereof, shall not be liable in any civil action brought by or on behalf of a disabled adult or elderly person for recovery of damages under this chapter, unless prior to such civil action, the financial institution, officer, director, or employee thereof, shall have been convicted of a violation of T.C.A. § 71-6-117. Provided, however, this provision shall not apply to theft or conversion by an employee, officer or director of a financial institution or liability arising under other provisions of law.

71-6-121. Contact information for advanced-age victims of abuse, neglect, and exploitation; posting requirements; exemption -- (a) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all senior centers, all community centers and all pharmacies shall post the following in the main public entrance:

(1) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office; and

(2) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect, and exploitation.

(b) The information listed in subsection (a) shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(c) All nursing homes, assisted living facilities and any other residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number.

(d) Any licensed nursing home that complies with the requirements of § 68-11-254 shall be exempt from the requirements of subsections (a) and (b).

71-6-122. Telephone service to report abuse, neglect, and exploitation -- The division of adult protective services of the department of human services shall establish a toll-free telephone service to enable citizens within the state to call the division free of charge to report abuse, neglect, or exploitation and to see relevant assistance from the division in such matters.